

Application Number: 10/716,716
Response to Office Action of August 10, 2005

REMARKS

A Final Office Action was mailed on August 10, 2005 ("Final Office Action"). Claims 1-20 are pending.

Claim 15 has been amended to recite, in subpart (a), "about 2-25 wt % . . ."; and in subpart (b), "from about 0.2 wt % . . .". Claim 1 has been similarly amended. Support for these amendments may be found in the specification as originally filed; for example, at page 3, lines 4-5; and page 3, lines 34-36, respectively. No new matter has been introduced.

Applicant submits that the present amendments place the present application in better form for appeal. Applicant respectfully requests entry of the amendments and reconsideration of the objections and rejections of record.

OBJECTION TO THE CLAIMS

Claim 20 stands objected to under 37 CFR 1.75(c) as allegedly being of improper dependent form for failing to limit the subject matter of Claim 15.

To facilitate prosecution of the present application, Claim 15 has been amended to recite, in subpart (a), "about 2-25 wt % of a high foaming anionic surfactant," as well as to recite, in subpart (b), "an amphoteric surfactant in quantities from about 0.2 wt % . . .". Claim 20, which ultimately depends from independent Claim 15, recites "from about 2 wt. % . . ." with respect to components of subpart (a); and "at least about 0.2 wt. % . . ." with respect to a component of subpart (b). Therefore, Applicant respectfully submits that Claim 20 appears in proper dependent form. Accordingly, it is respectfully requested that the objection to the claims be withdrawn.

REJECTIONS UNDER 35 U.S.C. § 103

Applicant's Claims Are Patentable Over Zocchi in View of Either Pyles or Bolich

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Claims 1-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zocchi (US 5,681,801) in view of Pyles (US 5,576,279) or Bolich, Jr. et al. (US 5,104,646). Applicant respectfully traverses this rejection.

Applicant respectfully maintains that there is no teaching, suggestion, or motivation to combine the Zocchi reference with either the Pyles or Bolich references in the manner suggested by the Examiner. Specifically, no teaching, suggestion, or motivation has been provided to one of skill in the art to add a guar gum (as allegedly disclosed by Pyles and/or Bolich) to the composition taught by Zocchi to achieve the claimed invention. Applicant refers to the reasons previously provided in Applicant's response dated April 25, 2005, and incorporates those remarks herein.

Applicant submits that a prima facie case of obviousness has not been successfully established. For the foregoing reasons, reconsideration is and withdrawal of the rejection is respectfully requested.

Applicant's Claims Are Patentable Over Zocchi in View of Either Baravetto or Inman

Claims 15, 16, and 18-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zocchi (US 5,681,801) in view of Baravetto et al. (US 5,980,877) or Inman (US 5,948,739). Applicant respectfully traverses.

As the Examiner has acknowledged, Zocchi does not teach a composition containing hydroxypropyl guar gum. *See* Final Office Action at page 8, second full paragraph.

Baravetto provides several long lists of compounds of many different types that are disclosed as being suitable suspending agents. The suspending agents are disclosed as providing suspension for conditioning agents, such as silicone conditioning agents, in dispersed form in the shampoo compositions of Baravetto. In contrast, the present claims do not recite such dispersed silicone conditioning agents. Therefore, Baravetto fails to teach or suggest the equivalence of hydroxypropyl guar gum to xantham gum as a thickening agent useful in the claimed invention. Thus, the disclosure of Baravetto fails to rectify the deficiencies of Zocchi.

To establish a case of prima facie obviousness there must be shown a motivation to combine the teachings of the cited references. To that end, some suggestion of the desirability to combine the references must be found and demonstrated in the references. As noted above,

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Baravetto lists many different types of compounds that are disclosed as potential suspending agents for the conditioning agents of the compositions of Baravetto. Disclosed as preferred suspending agents are long chain acyl derivative materials, long chain amine oxides, or mixtures of such materials. *See* Baravetto at col. 18, lines 46-53. Many other types of potentially suitable suspending agents are listed as well.

A mention of hydroxypropyl guar gum appears in a list of "other" materials that may be used as suspension agents in the compositions of Baravetto. No motivation is provided to one of skill in the art by the Zocchi or Baravetto references, alone or in combination, to specifically select from this or any of the lists of potential components the hydroxypropyl guar gum and combine same with the disclosure of Zocchi to achieve the claimed invention.

Similarly to Baravetto, the Inman reference appears to disclose a shampoo composition containing a silicone conditioning agent. Like Baravetto, Inman provides several lists of compounds that may be used as suspending agents to suspend a silicone conditioning agent in the compositions of Inman. As noted, the present claims are not directed to such a composition. Therefore, Inman fails to teach or suggest the equivalence of hydroxypropyl guar gum to xantham gum as a thickening agent useful in the claimed invention. Thus, the disclosure of Baravetto fails to rectify the deficiencies of Zocchi.

Like Baravetto, Inman lists many different types of compounds that are disclosed as potential suspending agents for the conditioning agents of the invention of Inman. Disclosed as preferred suspending agents are long chain acyl derivative materials, long chain amine oxides, or mixtures of such materials. *See* Inman at col. 13, lines 36-38. Many other types of potentially suitable suspending agents are listed as well.

A mention of hydroxypropyl guar gum appears in a list of "other" materials that may be used as suspension agents in the invention of Inman. No motivation is provided to one of skill in the art by the Zocchi or Inman references, alone or in combination, to specifically select from this or any of the lists of potential components the hydroxypropyl guar gum and combine same with the disclosure of Zocchi to achieve the claimed invention.

Applicant submits that a *prima facie* case of obviousness has not been successfully established. For the foregoing reasons, reconsideration and withdrawal of the rejection is respectfully requested.

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Applicant's Claims Are Patentable Over Zocchi in View of Brandt

Claims 15-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zocchi (US 5,681,801) in view of Brandt et al. (US 2003/0059382). Applicant respectfully traverses.

As the Examiner has acknowledged, Zocchi does not teach a composition containing hydroxyethyl guar gum. *See* Final Office Action at page 10, paragraph at bottom.

Brandt is not proper prior art against the instant application. The application of Brandt was filed on April 12, 2001; the publication date of the application was March 27, 2003.

The instant application claims priority to U.S. Ser. No. 09/086,427, filed on May 28, 1998 ("Parent Case"). The Examiner is further directed to the Communication filed by Applicant on November 19, 2003, indicating that no new matter was added to the instant application relative to the Parent Case. The effective filing date of the instant application is thus May 28, 1998. This date is prior to the filing and publication dates of the Brandt reference. Therefore, Brandt is not properly applied as prior art against the instant application. Thus, the acknowledged deficiencies of Zocchi cannot be rectified by Brandt.

Applicant submits that a prima facie case of obviousness has not been successfully established. For the foregoing reasons, reconsideration and withdrawal of the rejection is respectfully requested.

DOUBLE PATENTING REJECTIONS

Claims 1-14 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of Zocchi (US 5,681,801) in view of Pyles (US 5,576,279) or Bolich, Jr. et al. (US 5,104,646). Applicant respectfully traverses.

It is respectfully submitted that Applicant's foregoing remarks regarding the alleged obviousness of claims 1-14 under 35 USC § 103 over Zocchi in view of Pyles or Bolich are equally applicable to the double patenting rejection of record. Thus, Applicant's prior remarks are incorporated herein by reference.

Claims 15, 16, and 18-20 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of Zocchi (US

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5,681,801) in view of Baravetto (US 5,980,877) or Inman (US 5,948,739). Applicant respectfully traverses.

It is respectfully submitted that Applicant's foregoing remarks regarding the alleged obviousness of claims 15, 16, and 18-20 under 35 USC § 103 over Zocchi in view of Baravetto or Inman are equally applicable to the double patenting rejection of record. Thus, Applicant's prior remarks are incorporated herein by reference.

Claims 15-17 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of Zocchi (US 5,681,801) in view of Brandt et al. (US 2003/0059382). Applicant respectfully traverses.

It is respectfully submitted that Applicant's foregoing remarks regarding the alleged obviousness of claims 15-7 under 35 USC § 103 over Zocchi in view of Brandt are equally applicable to the double patenting rejection of record. Thus, Applicant's prior remarks are incorporated herein by reference.

For at least the foregoing reasons, Applicant respectfully requests reconsideration and withdrawal of the double patenting rejections of record.

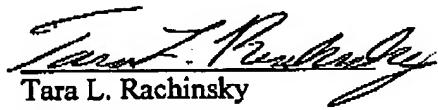
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CONCLUSION

In view of the above remarks, it is believed that claims 1-20 are in condition for allowance. Passage of this case to allowance is earnestly solicited.

Any fee due with this paper may be charged to Deposit Account No. 03-2455. Any overpayment may be credited to Deposit Account No. 03-2455.

Respectfully submitted,


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